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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,884	09/27/2000	Juan A.Morales Tirado	D/A0571	7382

7590

11/24/2003

John E Beck  
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EXAMINER
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SCHLAK, DANIEL K

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 11/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/670,884

Applicant(s)

TIRADO ET AL.

Examiner

Daniel K Schlak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18, 22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-18 is/are allowed.
- 6) ☒ Claim(s) 1-9, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Miscellaneous Note Concerning Claim Cancellations***

Claims 19-21 were canceled in Amendment C, paper #9 filed on 6/11/02. These claims were presented without comment in the most recently filed claim amendment F, post-RCE, unchanged and labeled "original".

As the claims were previously canceled, they cannot be reinstated with the same claim numbers. Thus, they have been canceled by the Examiner from amendment F as per Amendment C, the directions therein pertaining to claims 19-21 not being subject to subsequent retraction of any type.

Thus, in the event that Applicant did intend to reinstate these claims, Applicant is advised to present them with claim numbers higher than 24.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites, in line 3, "a disk defining a concentric circular opening..."

Concentric with what? The word "concentric" inherently demands a basis.

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Claim 1 recites, in line 5, that the "article" is "fixed". The article is the lone substantive recitation of the preamble. In other words, this claim is for nothing more than an "article". To what, then, could the article possibly be attached that is outside the scope of the preamble, given that the classifier wheel, disk, and fastener have been recited *within* the body of the claim?

Further, lines 5-6 of the claim state the article is "fixed by a plurality of vanes to the lower surface..." The lower surface of what? What lower surface? The recitation "the lower surface" is wholly without antecedent basis.

Claim 1 recites the limitation "the first concentric circular opening" in lines 6-7. There is insufficient antecedent basis for this limitation in the claim. A circular opening has been mentioned in the claim, but it has not been so named.

Claim 2 recites the thickness of the disk being "greater" and "lesser" at certain points there-along. Greater than what? Lesser than what? Than each other? Perhaps, but there is no reason to believe that this is the intent of the claim, and therefore the modifiers "greater" and "lesser" are comparisons to no more than some vague extraneous structure not having been made part of the claim. The thickness near the particle outlet is greater... than a piece of paper? Of course it is. The thickness adjacent the periphery is lesser.... than the fog experienced by Parisians on November 8? Why not. This rejection was posed in the first Office action on the merits, and has not been heeded

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Claim 3 recites the limitation "the concentric circular opening" in line 1. There is insufficient antecedent basis for this limitation in the claim. Which opening? There are two.

Claim 4 recites that the diameter is nonadjustable. Nothing is non-adjustable.

Claim 1 makes absolutely no sense. One of ordinary skill in the art, reading claim 1 and attempting to construct an article according thereto, would not arrive at a structure akin to anything disclosed in the application. Thus, there is nothing to which art may be applied, for a claim that doesn't even read on the embodiments of the application surely cannot read on the references, even with the circular inferences (article attached to something of which the article is comprised?) ignored.

Thus, art has not been applied to any of claims 1-9.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2,367,906 to Wall et al.

Wall teaches a classifier wheel (3) and a disk (47) and a fastener (48) to attach the disk to a particle outlet opening (5) of the classifier wheel, wherein the classifier wheel further comprises an upper surface (17) and a lower surface (23) defining a first

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concentric circular opening therein and a plurality of blade vanes (22) connecting the upper surface to the lower surface.

The diameter of the opening is naturally chosen by the desired flow rate and particle size passage rate, which are affected by the centrifugal action of the rotor and thus the apparatus comprises a centrifugal valve for adjusting the diameter of the opening.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel K Schlak whose telephone number is 703-305-0885. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh can be reached on 703-306 - 4173. The fax phone number for the organization where this application or proceeding is assigned is 703-306-4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308 - 1113.

dks

  
DONALD P. WALSH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600